

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 24

PONCE DE LEON INN d/b/a
HOLIDAY INN TROPICAL CASINO PONCE

Employer

and

FEDERACION DE TRABAJADORES
DE EMPRESA PRIVADA

Petitioner

Case 24-RC-8486

SUPPLEMENTAL DECISION ON CHALLENGED BALLOTS

Pursuant to a Decision and Direction of Election issued on October 6, 2005, an election by secret ballot was conducted on November 4, 2005, under the direction and supervision of the Regional Director among certain employees¹ of the Employer to determine whether or not said employees desired to be represented for the purpose of collective bargaining by Federación de Trabajadores Empresa Privada, hereinafter the Petitioner.

The tally of ballots, made available to the parties, revealed the following:

Approximate number of eligible voters	64
Void ballots	1
Votes cast for Petitioner	29
Votes cast against participating labor organization	30
Valid votes counted	59
Challenged ballots	2
Valid votes counted plus challenged ballots	61

Challenges were sufficient in number to affect the results of the election.

Pursuant to the Decision and Direction of Election, and in conformity with Section 102.69 of the Board's Rules and Regulations, the undersigned Regional Director sets forth her findings, conclusions and recommendations with respect thereto.

¹ The unit included: All housekeeping employees, front desk employees, maintenance employees (including janitors, pool cleaners and gardeners), and food & beverage employees (including cooks, dishwashers, cashiers, hosts, waiters, bartenders, bus persons and concierge) employed by the Employer at its facility located in Ponce, Puerto Rico but excluding all other employees, temporary employees, subcontracted employees, casino personnel, office clerical employees, guards, professional employees and supervisors as defined in the Act.

THE CHALLENGED BALLOTS

Sharilly Baez and Edelmiro Rosado were challenged by the Board Agent at the scheduled election because their names did not appear on the list of eligible voters. The Petitioner, contrary to the Employer, claims that Ms. Baez is eligible to vote because she was employed in an eligible classification and on the payroll date of eligibility (September 29, 2005) but was unlawfully discharged by the Employer on September 15, 2005. In this regard the Petitioner states that on September 26, 2005 it filed an unfair labor practice in Case 24-CA-10191 alleging the discriminatory discharge of Ms. Báez in violation of Section 8(a)(3) and (1) of the Act.² However, the record reflects that on November 30, 2005 the Regional Director dismissed the charge finding that Ms. Baez's discharge did not violate the Act in any way. Petitioner did not appeal the Regional Director's determination.³ Accordingly, as Ms. Báez was lawfully discharged on September 15, 2005 and therefore not an employee of the Employer on the date of the election herein, I find that she was not eligible to vote. Accordingly, I sustain the challenge to her vote. I further find that the remaining challenged ballot of Edelmiro Rosado is therefore not determinative.

CONCLUSION

Having determined that Sharilly Báez was not eligible to vote and that the remaining challenged ballot of Edelmiro Rosado's is not determinative, I hereby certify that a majority of the valid votes counted were not cast in favor of the Petitioner.⁴

Dated at San Juan, Puerto Rico this 6th day of February, 2006.

Marta M. Figueroa
Regional Director
National Labor Relations Board
Region 24

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² No objections to the election were filed herein.

³ The appeal of the Regional Director's decision to dismiss the Petitioner's case was originally due December 14, 2005. Although the Petitioner filed and was granted an additional seven day period to file an appeal, no appeal was actually filed.

⁴ Under the provisions of Section 102.69 of the Board's Rules and Regulations, exceptions to this report may be filed with the Board in Washington, D.C. 20570. Exceptions must be received by the Board in Washington by **February 21, 2006**.

Under the provisions of Section 102.69(g) of the Board's rules, documentary evidence, including affidavits, which a party has timely submitted to the Regional Director in support of its challenges and which are not included in the Report, are not part of the record before the Board unless appended to the exceptions or opposition thereto which the party files with the Board. Failure to append to the submission to the Board copies of evidence timely submitted to the Regional Director and not included in the report shall preclude a party from relying upon that evidence in any subsequent related unfair labor practice proceeding.